January 25, 2008

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex O)
600 Pennsylvania Avenue, NW
Washington, DC 20580
Via e-filing

Re: Carbon Offset Workshop – Comment, Project No. P074207

Introduction

Constellation Energy ("Constellation") appreciates the opportunity to comment on the Federal Trade Commission's ("FTC" or "Commission") inquiry related to the marketing of greenhouse gas reduction credits ("carbon offsets") and renewable energy certificates ("RECs").

Constellation, a FORTUNE 125 company, is North America's largest competitive supplier of electricity and a leading provider of natural gas and energy-related services to commercial, industrial, utility and institutional customers. Constellation serves two-thirds of the FORTUNE 100 companies, and overall provides competitive electricity totaling more than 50,000 megawatts ("MW"). Constellation's NewEnergy business unit sells electricity, natural gas, and energy-related services to customers in competitive markets across North America. Constellation NewEnergy serves more than 19,000 customers in 31 states and three Canadian provinces, with more than 16,000 MW of electric load and more than 400 billion cubic feet of annual natural gas consumption.

Constellation has been active in the competitive renewable energy market since its earliest days. As a licensed retail energy supplier in every state in the United States with a competitive retail energy market, Constellation NewEnergy is required to comply with many different state renewable portfolio standards ("RPS"), which require that a certain portion of supply sold to retail customers in a particular state be generated by "renewable" sources. In addition, Constellation is active in the voluntary renewable energy market, buying and selling renewable energy and renewable energy certificates ("RECs"), which reflect the environmental and certain other non-power attributes of electric generation, based on end-use customer demand for those products. In 2006 alone, Constellation transacted in 3.6 million megawatt-hours ("MWh") of renewable energy and RECs.[1] Currently, Constellation offers retail customers a choice of renewable energy products, including RECs "bundled" with electricity as well as stand-alone RECs, some of which are certified by the non-profit Center for Resource Solutions as satisfying its "Green-e" environmental and consumer protection standards, and some of which meet other standards, in each case as disclosed to customers.

[1] Constellation Energy 2nd Quarter Meeting, July 27, 2007, slide 7.

The REC market has matured over time into a well-understood, transparent, credible environmental market. This development has been achieved by allowing market-driven solutions to address issues that had been perceived as potential market impediments, such as issues of claim verification or fears of double-counting. Similarly, the carbon offset market, which began its development more recently, is following a parallel path as the REC market. As market participants (particularly consumers) enter the marketplace with varying levels of knowledge and access to a variety of information resources regarding carbon offsets, the carbon offset market is also maturing at pace. Constellation is confident that, as was the case in the REC market, market-driven solutions are being and will continue to be developed to address consumer confidence or credibility concerns that may present themselves during the nascent stages of carbon offset market development.

In writing these comments, Constellation has elected to provide general information relevant to the issue at hand, which inform without directly responding to the questions posed. In so doing, Constellation's aim is to offer insight into the relevant characteristics of the current market, including the size and existing structure. Constellation stresses that in offering its guidance, the FTC must strive to strike an appropriate balance that will further its consumer protection objectives, while simultaneously supporting and fostering positive market development.

Customer Understanding

As a supplier of retail gas and electricity, Constellation works with commercial and industrial customers to purchase energy. Often these customers are participants in the U.S. Environmental Protection Agency's ("EPA") Green Power Partnership and Climate Leaders programs, which are voluntary programs that encourage organizations to buy green power and reduce greenhouse gas emissions. Some of our customers also participate in the Chicago Climate Exchange ("CCX"), the Green-e Energy Label program, and various other voluntary programs that address renewable energy and/or carbon emissions. Generally speaking, this class of customer is a sophisticated consumer that has utilized the existing resources to understand the products available and make purchase decisions.

Constellation has experienced an increase in the demand for renewable power from its customers over the past year. Constellation's overall market experience suggests that much of this demand is fueled by interest in climate change and, more specifically, a desire of energy consumers to mitigate their "carbon footprint," or the carbon dioxide emissions attributable to their electricity consumption. These claims are supported by the establishment of standards developed by the EPA, state regulatory bodies, the World Resources Institute, the Center for Resource Solutions, and the CCX that permit the use of qualifying RECs to offset electricity related, but not other, emissions.

Market Size and Maturity

Over the past ten years, the renewable energy markets have matured significantly. The "compliance market" for energy and RECs used for RPS purposes is by far the largest

component of those markets. According to the National Renewable Energy Laboratory ("NREL"), the national compliance market totaled approximately in 20,846,000 MWh in 2006.[2]

Similarly, the "voluntary market" for energy and RECs for end use customers who voluntarily use green power has grown dramatically. NREL found that "2006 purchases are estimated to total about 12 million MWh. The voluntary market grew by 62% in 2004, 37% in 2005, and 40% in 2006. As previously mentioned, Constellation has also experienced a dramatic increase in the demand for renewable power from its customers over the past year.

Currently, the voluntary market represents nearly one-fifth of the overall renewable energy demand from both compliance and voluntary markets on a MWh-basis. If the voluntary market continues to grow at a rate of 35% annually, it will reach about 40 million MWh by 2010."[3] Certification programs, such as Green-e, have played a key role in market growth by assisting customers to better understand their purchases. "Green-e Energy Certified" products are required to meet certain disclosure, marketing and auditing requirements.[4] In 2006, 8.8 million MWh of renewable energy certificates (double the 2005 amount) were marketed as Green-e certified.[5]

With the growth of any market comes the demand for new tools to manage the expectations and performance of products – the market for renewable energy has been no different. Most renewable energy purchases, including those for voluntary and mandatory markets, are transacted using the transfer of RECs (with or without the associated energy).[6] RECs, which are split off from electricity and can be traded separately, were developed to address the problem of tracking the "green" attributes of power from its generating source to the end use consumer. Initially, regulators and market participants feared that transfers of RECs might result in "double-counting" – the sale of multiple RECs associated with the same MWh of electricity or the use of such a REC to satisfy more than one compliance standard.

In response, the development of regional tracking systems in many parts of the country to account for each MWh of renewable energy generated helped to verify the single use

---

[2]Interaction of Voluntary and Compliance Renewable Energy Market, Lori Bird and Elizabeth Lokey, NREL, p.6, October 2007 ("2007 NREL Report").

[3] *Id*.

[4] Green-e Energy is a voluntary certification program for renewable energy managed by the Center for Resource Solutions ("CRS"). For more information see, http://www.green-e.org/

[5] According to the Center for Resource Solutions Annual Green-e Report, October 2007.

[6] A REC generally represents the attributes of one MWh of power and can contain information as to the fuel used to generate the MWh of electricity, the month and year in which the electricity was generated, the age of the facility that generated the electricity, and the emissions associated with such generation.

requirement and address the double-counting concern.[7] This practice has extended to the voluntary markets. For example, CRS requires that "Green-e certified products . . . be comprised of eligible renewable generation over and above anything required by state or federal RPS requirements, legislation, or settlement agreements."[8] Tracking systems coupled with voluntary certification programs such as the Green-e Energy Standard were devised in the market to lend credibility to product claims.

As the discussion about climate change concerns has increased, so has the interest about the carbon value of electricity increased among our customers. Given this interest, it is likely that demand for carbon offset products will continue to grow and tools will enter the market to manage the credibility of such products. Already, offset registries are tracking credits and voluntary certification programs, many of which were discussed at the workshop, are establishing standards for carbon offsets based on adopted methodologies. While consumers may ultimately determine a preference for one standard over another, the FTC should allow for the evolution of applicable standards to continue and step in as necessary to determine whether such methodologies utilize competent and reliable scientific evidence.

Existing Frameworks

Whether as extensions of the compliance regulatory structure or as new tools in the market, a number of rules currently apply to REC and carbon offset markets. A number of states have marketing rules currently in place for RECs and green power (see Appendix 1).

In addition, as mentioned above, several voluntary programs provide standards to define REC and carbon offset product qualifications and certification procedures for complying with those standards. REC programs such as Green-e Energy are described above. Programs focused on carbon offsets include: US EPA (Climate Leaders and the Green Power Partnership), the Chicago Climate Exchange, CRS/Green-e, the Gold Standard, and the Voluntary Carbon Standard. Further, the World Resources Institute, a non-profit organization, has established greenhouse gas accounting protocols that are widely incorporated by other organizations. These programs generally use credible science and engage in open and transparent processes to set standards and assess and certify projects and products. Customers can avail themselves of these to make informed decisions about offset and REC purchases.

Role of the FTC

Constellation appreciates the role that the FTC plays in requiring sellers and advertisers to credibly substantiate claims made about environmental products. Further guidance on the kinds of claims that are overly broad and inappropriate for RECs and carbon offsets would be

[7] Several tracking systems currently exist, including the NEPOOL Generation Information System in New England, the PJM EIS Generation Attribute Tracking System in the Mid-Atlantic states, the ERCOT REC System in Texas, the Midwest Renewable Energy Tracking System in the Upper Midwest, and the Western Renewable Energy Generation Information System in the western states. Each of these tracking systems have different rules and operating procedures, but all of them follow the general process for the creation and transfer of RECs described in this letter.

[8] Page 7, Green-e Energy National Standard, Appendix D, July 20, 2007.

beneficial to the marketplace. Given the presence of knowledgeable and sophisticated consumers in the marketplace, we would caution against limiting the flexibility of customers to obtain the products they are interested in purchasing – or the flexibility of suppliers to provide those products.

The current marketplace may not yet be fully mature; however, Constellation supports allowing the evolution of the environmental markets to continue unimpeded to the maximum extent feasible.

Constellation would be happy to answer any questions the Commission has about these comments. Please feel free to contact the undersigned.

Very truly yours,

/s/ *Michael E. Kaufmann*

Michael E. Kaufmann
Senior Counsel
Constellation Energy Group, Inc.
111 Market Place, Suite 500
Baltimore, Maryland 21202
Phone: (410) 470-2886
Fax: (410) 470-2600
Email: michael.kaufmann@constellation.com

APPENDIX ONE – SAMPLE OF STATE REGULATIONS ON ENVIRONMENTAL MARKETING CLAIMS

Delaware:

- An Electric Supplier cannot advertise or market its product as environmentally friendly unless it meets the "green power" resource mix requirement in 10-800-049 DEL. CODE REGS. § 4.

Pennsylvania:

- The use of general, unsubstantiated and unqualified claims of environmental benefits, such as "green" and "environmentally friendly," is prohibited. Whenever an EGS markets its generation supply as having such characteristics, the EGS shall have available information to substantiate its claims. The PA Public Utilities Commission supports the application of the Federal Trade Commission's ("FTC") Guides for the Use of Environmental Marketing Claims. *See* 16 C.F.R. § 260.1-260.8 (2006) (relating to guides for the use of environmental marketing claims). *See* 52 PA. CODE § 54.6(c), (f).

District of Columbia

- Any advertisement that contains specific environmental claims must be supportable by competent evidence. DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION Order No. 11796, September 18, 2000, Attachment A, Section III, 3-2.

Massachusetts:

- Under 940 Code of Massachusetts Regulations, Sections 19.01 *et seq*., it is an unfair or deceptive trade practice to perform certain actions which are forbidden under the electricity supplier statute and regulations or which violate the uniform deceptive trade practices act such as:
    - A seller cannot make a material representation which the seller knows has the capacity to deceive or mislead a customer, including in relation to the quality, environmental characteristics or source of energy; and
    - A seller cannot make representations about the environmental benefits of its product unless it makes available the factual bases for those representations, which factual bases must be maintained for 18 months.
- A Supplier may advertise a percentage of its resource portfolio that connotes the environmental benefits of the power or energy in the resource portfolio, provided that the percentage is derived from known resources and the percentage exceeds any mandates of

the division of energy resources pertaining to a renewable portfolio standard or any other regulatory percentage requirement. *See* 220 MASS. CODE REGS. § 11.06(6)(e).

New Jersey:

- Information about the environmental characteristics of the electricity being purchased must be disclosed in a standardized label format on all bills, contracts, and marketing materials. This information can be for the Electric Power Supplier's entire portfolio, or for disaggregated portions of the portfolio sold as a specific product to certain customers. The label must include a description of the fuel mix and air emissions of the portfolio or product and the amount of electricity saved by the EPS, represented by the retirement of emissions credits. All information on the label must be certified by an accountant prior to dissemination. *See* N.J. STAT. § 48:3-87.

Rhode Island:

- The impact of a Non-Regulated Power Producer's fuel and environmental sources of generation must be provided to customers in the format prescribed by the Commission upon any future adoption of such a format. Prior to such adoption:
    - Non-Regulated Power Producers that make representations about generation sources, emissions or other environmental claims about their product must do so in a manner that is factually accurate and not misleading,
    - Non-Regulated Power Producers making such claims must file a copy of the claim and substantiation thereof with the Commission within ten business days after making it public, and
    - the filing must include a description of the contracts and/or entitlements that are being relied upon by the Non-Regulated Power Producers to support its claim. *See* 90-060-004 R.I. CODE R. § II.F.

Texas:

- If making a claim about the price or environmental quality of a product in advertising, regardless of the medium used to advertise, the Electricity Facts Label must either be included in the advertisement or it must be mentioned where the retail customer can obtain and review the Electricity Facts Label. Specific language addressing this issue (and tailored to the medium used to advertise the service) can be found in 16 TEX. ADMIN. CODE § 25.475 (2006).